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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,525	02/18/2004	Floyd Backes	160-053	2448

34845 7590 12/20/2006  
McGUINNESS & MANARAS LLP  
125 NAGOG PARK  
ACTON, MA 01720

EXAMINER
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DUONG, FRANK

ART UNIT	PAPER NUMBER
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2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/20/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

57

<b>Office Action Summary</b>	<b>Application No.</b> 10/781,525	<b>Applicant(s)</b> BACKES ET AL.	
	<b>Examiner</b> Frank Duong	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. This Office Action is a response to communications dated 10/18/06. Claims 1-6 are pending in the application.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 10/781,526. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following rationales:

***Instant application claim 1 is a representative claim and it calls for:***

**A method for use by an access point in a wireless communications**

Art Unit: 2616

environment including multiple access points and stations, wherein stations gain network access by associating with one or more of the access points, comprising the steps of:

collecting bid messages from stations, each bid message being a request from one station to associate with the access point;

selecting the bid message collected from the station calculated to realize a greatest increase in data rate by becoming associated with the access point; and

causing the station which submitted the selected bid message to become associated with the access point.

**Copending application '526 claim 1 is a representative claim and it calls for:**

**Apparatus** for use in an access point in a wireless communications environment including multiple access points and stations, wherein stations gain network access by associating with one or more of the access points, comprising:

**logic for** collecting bid messages from stations, each bid message being a request from one station to associate with the access point and including a parameter related to the distance between the access point and that one station;

**logic for** selecting only a subset of the bid messages based at least in-part on the parameter related to distance; and

**logic for sending an accept message to each station which sent a selected bid message, the accept message for** causing the station to associate with the access point.

Even though there is a mere difference between the claimed inventions as indicated in the bolded words. Through a comparison between the above claims, it appears the claimed invention of the instant application encompasses that of the copending application for the recited logic of the copending application performing identical functions.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1-6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 (as of 09/19/06) of copending Application No. 10/780,593. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following rationales:

**Instant application claim 1 is a representative claim and it calls for:**

**A method** for use by an access point in a wireless communications environment including multiple access points and stations, wherein stations gain network access by associating with one or more of the access points, comprising the steps of:

collecting bid messages from stations, each bid message being a request from one station to associate with the access point;

selecting the bid message collected from the station calculated to realize a greatest increase in data rate by becoming associated with the access point; and

causing the station which submitted the selected bid message to become associated with the access point.

**Copending application '593 claim 1 is a representative claim and it calls for:**

A method for use in an access point in a wireless communications environment including multiple access points and stations, wherein stations gain network access by associating with one or more of the access points, comprising:

**at each of a plurality of access points within communication range of stations, repeatedly executing the steps of:**

collecting bid messages from stations not currently associated with that access point, each bid message indicative of a request to associate, and including a parameter related to the distance between the access point and the station;

selecting only a subset of the bid messages based at least in part on the parameter related to distance; and

sending an accept message to each station from which a selected bid message was received, the accept message for causing the station to associate with the access point.

Even though there is a mere difference between the claimed inventions as indicated in the bolded words. Through a comparison between the above claims, it appears the claimed invention of the instant application encompasses that of the copending application for the claimed invention of the instant application is a broader version of that of the copending application by omitting certain limitation. In addition, it

Art Unit: 2616

has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184(CCPA). Also note Ex Parte Rainu, 168 USPQ 375 (Bd. App. 1969); omission of a reference whose function is not needed would be an obvious variation.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. The prior/related art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pinard et al (USP 5,815,81).

Smith, The Contract Net Protocol: High-Level Communication and Control in a Distributed Problem Solver, IEEE, pages 1104-1112, December 1980.

Cuthbert et al, Resource Management Design Document, ADAMANT Project, pages 1-97, June 2003.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2616

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

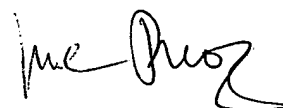
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Duong whose telephone number is 571-272-3164. The examiner can normally be reached on 7:00AM-3:30PM, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn D. Feild can be reached on 571-272-2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 2616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'me Duong', with a stylized flourish at the end.

**FRANK DUONG  
PRIMARY EXAMINER**

December 15, 2006